

03.04.2025

ADSL-1
Ct. no.39
ss

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 30384 of 2024

**Biswajit Pramanik
-Vs-
The State of West Bengal & Ors.**

Mr. Pingal Bhattacharyya
Mr. Rajdeep Sinha
... for the petitioner

Mr. Ansar Mandal, Ld. AGP
Mr. Tanweer Jamil Mandal
... for the State

Mr. Dilip Kr. Sinha
... for the respondent nos.7 & 8

This matter is listed in the supplementary list upon urgent mentioning by the learned advocate for the petitioner.

The writ petition has been filed for cancelling and/or withdrawal of order dated 4th July, 2024 issued by the Sub-Divisional Officer and Sub-Divisional Magistrate, Haldia, respondent no.3.

The petitioner contends that despite there being permission granted by the Pradhan, Chaitanyapur Gram Panchayat, respondent no.6 for construction of a concrete boundary wall, orders have been issued by the Sub-Divisional Officer and Sub-Divisional Magistrate, Haldia dated 4th July, 2024 for demolition of the boundary wall of the petitioner's property. Hence, this writ petition.

Mr. Pingal Bhattacharyya, learned advocate for the petitioner submits that the petitioner was granted permission by the Pradhan, Chaitanyapur Gram Panchayat to make construction of the concrete boundary wall on 27th March, 2018. Despite there being permission, the impugned order has been issued by the Sub-Divisional Officer and Sub-Divisional Magistrate, Haldia on 4th July, 2024. He also submits that the entire dispute is civil in nature. He further submits that as per Rule 19(3) of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (*hereinafter referred to as 'Rules of 2004'*), no permission is required for making concrete boundary wall surrounding a place used for commercial purpose. He indicates that already notice of demolition has been issued by the Pradhan, Chaitanyapur Gram Panchayat on 25th March, 2025. He seeks that the impugned order be set aside in the interest of justice.

On the contrary, Mr. Dilip Kr. Sinha, learned advocate appearing for the private respondent nos. 7 & 8 submits that in the earlier round of litigation, the petitioner failed to produce any scrap of paper to primarily suffice of making any application for obtaining such permission. Therefore, the permission for construction of concrete boundary wall, as shown by the petitioner, is illegal and has got no basis. He also indicates that pursuant to order passed in the writ

petition being W.P.A. 27503 of 2023, the impugned order has been passed and contempt application being CPAN 25 of 2025 has also been filed for implementation of the order. Moreover, it is settled proposition of law that pendency of civil suit will not debar the Panchayat Pradhan or the local bodies to take steps against unauthorized construction. To buttress his contention, he relies on a decision of the Hon'ble Division Bench of this Court in the case of *Sri Pradip Roy versus State of West Bengal & Ors. (M.A.T. 136 of 2025)*. He seeks for dismissal of the writ petition.

Mr. Tanweer Jamil Mandal, learned advocate appearing on behalf of the State also submits that the earlier permission for concrete boundary wall obtained by the petitioner as contended is without any basis. The petitioner could not produce a single scrap of paper to show that he made application before the authority for obtaining the same. The report filed by the State also would indicate that there was no permission obtained by the petitioner from the concerned Gram Panchayat for construction of concrete boundary wall. He also seeks for dismissal of the writ petition.

The only issue which falls for consideration is whether the impugned order dated 4th July, 2024 passed by Sub-Divisional Officer and Sub-Divisional Magistrate, Haldia is legally tenable or not.

At the outset, upon going through the impugned order dated 4th July, 2024 passed by the Sub-Divisional Officer and Sub-Divisional Magistrate, Haldia, it is found that the same has been passed in terms of the order passed in the earlier writ petition being W.P.A. 27503 of 2024.

In the earlier writ petition, it was contended by the petitioner that the inspection conducted by the Block Development Officer, Sutahata Development Block, was not conducted upon notice and the inspection report and order impugned were set aside with following direction:

“The spot inspection report shall be circulated amongst the parties and an opportunity of hearing shall be granted to all the necessary parties prior to passing the final order by the Sub-Divisional Officer, Haldia.

The report of the Block Development Officer, Sutahata Development Block shall be forwarded to the Sub-Divisional Officer, Haldia for taking consequential steps.

It is made clear that the inspection report and the order passed relying upon the said inspection report is set aside only because there is no proof to show that the said inspection was conducted upon prior intimation to the parties. The Court not being satisfied that principle of natural justice was complied with at the time of inspection has set aside the inspection report and the order passed consequent thereto.

The issue will be decided only from the stage of the inspection by the Block Development Officer, Sutahata Development Block as per the instruction of the Sub-Divisional Officer, Haldia. Steps taken prior to passing direction for conducting inspection, is not interfered with by the Court.

The proceeding by the Sub-Divisional Officer is not required to be started de novo. The same will start only from the stage of causing the physical inspection.”

The principal contention of the petitioner is that the concrete boundary wall has been constructed upon permission. Be that as it may, upon going through the impugned order, it is found that the Pradhan, Chaitanyapur Gram Panchayat, stated that no formalities

have been maintained as per Rules and there is no document as a proof in the office record and as such, the permission is illegal.

Learned Counsel for the petitioner has strenuously relied on a document at page 45 (Annexure-P2 to the writ petition) showing permission for construction of boundary wall dated 27th March, 2018 issued by the Pradhan, Chaitanyapur Gram Panchayat.

Upon going through the aforesaid document, it is found that the same has been issued on an application dated 13th March, 2018. During course of hearing, the petitioner could not produce any such application made before the authority concerned seeking permission. It is pertinent to note that no such application has been annexed to the writ petition also to primarily establish that such permission was obtained upon an application being made. Thus, the petitioner has failed to show that the permission for making concrete boundary wall has a legal basis. It has been pressed into service on behalf of the petitioner that a civil suit is pending between the parties and, therefore, the writ Court should refrain from passing any orders. Be that as it may, local authorities can act to combat the unauthorized construction and exercise their power as enshrined in the Act, hence this Court finds substance in the submissions of the learned advocate for the private respondent nos. 7 & 8 relying on a decision of the Hon'ble Division Bench of this Court in

the case of *Sri Pradip Roy (supra)*. Moreover, a contempt application being CPAN 25 of 2025 has been filed wherein it has been observed by the Court taking up contempt matter that pendency of the contempt application will not stand in the way of the alleged contemnors to comply with the direction passed by the Court.

Now it is to be seen whether under Rule 19 there is any requirement of permission as regards the boundary wall constructed by the petitioner.

Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 is quoted below:

“19. Exemption from permission- (1) *No permission of the Gram Panchayat shall be necessary for erection of any thatched structure, tin shed, or tile shed, without brick wall, covering an area not exceeding eighteen square metres and such structure or shed does not cover more than three fourths of the total area of the land including the land appurtenant thereto:*

[Provided that no permission of the Gram Panchayat shall be required for construction of houses under poverty alleviation programme.]

(2) *Permission of the Gram Panchayat shall not be necessary for repair of an existing structure or building unless,-*

- (i) *any structural change is involved, or*
- (ii) *such repair brings any change in the existing covered area, or*
- (iii) *such repair includes any addition of a projection from the existing structure or building ground level or upper level.*

(3) *Permission of a Gram Panchayat shall not be necessary for erection of a boundary wall unless it is made of brick or cement and the bounded area is not kept as vacant land but it is used or likely to be used as stack yard or for any commercial or institutional purpose either on open space or by erecting temporary shed.”*

In ***Tapan Kumar Dutta & Ors. versus The State of West Bengal and Ors. (MAT 1704 with CAN 9435 of 2016)*** reported in ***2016 4 CHN 709***, this Hon’ble Court observed as follows:

“7. A bare perusal of sub-rule (3) of Rule 19, as quoted above, reveals that no permission from a Gram Panchayat is necessary for erection of a boundary wall unless it is made of brick or cement and the bounded area is not kept as vacant land, but it is used or likely to be used as a stack yard or for any commercial or institutional purpose, either on open space or by erecting temporary shed. In other words, if a boundary wall is erected out of brick or cement and within the bounded area, the land is vacant or used for non-commercial or non-institutional purpose, there is no requirement for permission from the concerned Gram Panchayat.

8. The clear language of the statute is self-explanatory in nature. The factual narration preceding the decision rendered by the Pradhan of the Gram Panchayat – which was the subject-matter of challenge before the writ Court – does not disclose construction of a boundary wall for commercial or institutional purposes for which permission was required to be obtained in terms of sub-rule (3) of Rule 19 from the concerned Gram Panchayat. Rather, the factual narration preceding the decision rendered by the Pradhan of the concerned Gram Panchayat clearly reveals that the said wall was being constructed around the perimeter of a residential house of the appellants. As such, there was no unauthorized construction of a boundary wall which could have led to an order passed by the Pradhan of the concerned Gram Panchayat for demolition. The learned Single Judge while dismissing the writ petition did not consider this aspect of the matter at all. The other significant aspect which remained unnoticed before the learned Single Judge is that it is not the Pradhan but the concerned Gram Panchayat which is the proper authority/body empowered to either grant or refuse permission for any erection or construction or repair as envisaged under Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.”

Bearing in mind the provision as well as the proposition of law laid down in the above decision, it manifest that if a boundary wall is erected out of brick or cement and within the bounded area, the land is vacant or used for non-commercial or non-institutional purpose, there is no requirement for permission from the concerned Gram Panchayat.

It is not in dispute that the concrete boundary wall surrounds a land used for commercial purpose. Thus, the argument that there is exemption from taking permission does not hold good.

Accordingly, the impugned order does not call for interference.

In view of the above, the writ petition being **W.P.A. 30384 of 2024** stands dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)